



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

AF 2642
#

In re application of : JEFFREY N. WEISS
Serial No. : 09/848,753
Filed : May 3, 2001
For : SELECTIVE TELEPHONE BLOCKER WITH
TIMER
Examiner : William J. Deane, Jr.
Art Unit : 2342
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APPELLANTS' BRIEF IN ACCORDANCE WITH 37 C.F.R. §1.192(c)

Appeal from the Examiner,
William J. Deane, Jr., in and for
the United States Patent and Trademark Office

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I. REAL PARTY IN INTEREST

The party named in the caption, namely, Jeffrey N. Weiss is the real party in interest, i.e. the owner at the time the brief is being filed.

II. RELATED APPEALS AND INTERFERENCES

Applicant/Appellant and Appellant's legal representative, are unaware of any other appeal(s) or interference(s) which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-2, 4, 5, 8-23 and 25-29 are pending in this application and currently stand rejected. Applicant is appealing the rejection of these claims. The appealed claims are set forth in the Appendix to this Brief.

IV. STATUS OF THE AMENDMENTS

No Amendments after Final have been filed.

V. SUMMARY OF THE INVENTION

The present invention provides a selective telephone call blocker of the present invention which generally has two modes of operation: (1) based on a user entering a reference time, which can be the current or present time and a beginning "on" time (an optional day and/or date can also be entered) and in some instances an ending "on" time, and (2) if it's outside the time period, the device is not in a blocking mode and the phone line just works as per normal. Page 4, line 27 - Page 5, line 2. The device can be programmed to be in a blocking mode for multiple

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periods of time during the day to allow the user to set the time of day and then set several blocking on times and blocking off times, to allow the device to have interval periods where it would be in a blocking mode. Page 5, lines 2-6. A secret code can be entered or programmed for certain users so they can have their telephone calls get through. Page 5, lines 6-8. One or more levels of code can be used or programmed with the present invention, such as one code designated for callers who the user wishes to receive calls at any time, another code designated to allow the caller to get through only during business hours, and another code restricting the caller to a certain period. Page 5, lines 9-15.

When the device is in the blocking mode, the user's phone is preferably disconnected from the telephone line. Page 5, lines 24-25. A microprocessor controlled "ring detector" component is provided and monitors the telephone line, such that if the user's number is dialed and rings, it will detect it. Page 5, line 31 - Page 6, line 1. The microprocessor controlled ring detector detects the ring and causes an output to switch the "answer" component to answer the phone line. Page 6, lines 3-5. Thus, as far as the phone company is concerned, the phone has been answered. Page 6, lines 5-6. Once answered, a "voice response unit" and a DTMF receiver/tone receiver ("tone receiver") are activated and inform the caller that the user's phone is currently being blocked. Page 6, lines 7-10. The voice response unit and tone receiver then asks or requests that the caller enter the secret code for access for detection by the tone receiver. Page 6, lines 9-12.

If after a timeout period the tone receiver does not get the correct code, the voice unit provides a message to the caller,

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such as, but not limited to, "I'm sorry, we haven't received the correct code in the allotted time" and then hangs up. Page 6, lines 13-18. If the device does receive the correct code within the proper time, then it preferably indicates that the proper code has been received, such as by saying "thank you", etc., and it creates a localized ringing signal within the unit, as opposed to the user's phone, to alert whoever may be in the household to answer the phone. Page 6, lines 26-31. Preferably the alerting is done through a speaker and speaker box. Page 6, lines 31-32.

VI. ISSUES PRESENTED

1. Whether claims 9, 10, 12 and 25 are properly rejected under 35 U.S.C. §112, second paragraph.

2. Whether claims 1-2, 4-5, 8-9, 13-14, 17-18 and 25-29 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Novak in view of Horne.

3. Whether claims 10-12, 15-16 and 19-23 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Novak, Horne and Lee..

VII. GROUPING OF THE CLAIMS

As to claims subject to this Appeal, Claims 1, 15 and 17 are independent claims.

Dependent claims 4, 8, 9 and 14 stand or fall with Independent Claim 1. Independent basis for the allowance of claims 2, 5, 10-13 and 27 is provided in the argument. Accordingly, claims 2, 5, 10-13 and 27 do not stand or fall with Independent claim 1.

Claim 16 stands or falls with Independent Claim 15. Independent basis for the allowance of claim 28 is provided in the

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argument. Accordingly, dependent claim 28 does not stand or fall with Independent Claim 15.

Claims 18, 19, 21-23 and 26 stand or fall with Independent Claim 17. Independent basis for the allowance of claims 20, 25 and 29 is provided in the argument. Claims 20, 25 and 29 do not stand or fall with Independent claim 17.

VIII. ARGUMENT

A. ISSUE NO. 1

Whether claims 9, 10, 12 and 25 are properly rejected under 35 U.S.C. §112, second paragraph. Applicant respectfully disagrees that the Examiner's comments rise to the level of a Section 112, second paragraph, rejection. The jumbling of words in the claim were merely a printer malfunction. However, the claims are properly represented in the Appendix to this Appeal Brief and upon request by the Examiner, Applicant will submit substitute pages to the Examiner.

As to Claim 25, for purposes of this appeal and any continuing prosecution of the application, such claim should be considered now depending from Independent claim 17.

As to references in the specification, see page 5, line 30 for references to vertical switches 14 and 16 and see page 4, line 31 for reference to "dates".

In the event that the Board is considering affirming the Section 112 rejection, Applicant requests a reasonable time period in which to furnish a written response addressing all of the above. Alternatively, if the Examiner is willing to entertain an Amendment by Applicant to remove the Section 112 rejection, Applicant respectfully requests that the Examiner contact Applicant in order to coordinate the Amendment filing.

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Accordingly, in view of the above, Applicant respectfully traverses the rejections of claims 9, 10, 12 and 25 under 35 U.S.C. §112, second paragraph and asks that such rejection be withdrawn.

B. ISSUE NO. 2

Whether claims 1-2, 4-5, 8-9, 13-14, 17-18 and 25-29 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Novak in view of Horne.

Before specifically addressing the Novak and Horne references, Applicant respectfully notes that when applying 35 U.S.C. § 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir. 1986).

To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

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Ex parte Clapp, 227 U.S.P.Q. 972, 973 (Bd.Pat.App & Inter. 1985); In re Rouffet, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a *prima facie* case of obvious was held improper.). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

The independent claims require means for setting or setting an activation period, which includes an entered starting time. Independent claim 15 and dependent claims 13 and 25 also state that the activation period includes an entered ending time. The Examiner recognizes this deficiency in Novak and merely states that it would be obvious to incorporate elements 302 and 304 of the Horne system into the Novak device to make Novak more convenient. Applicant respectfully submits that there is absolutely no teaching, suggestion or motivation for the proposed combination of references.

Additionally, Applicant's invention is a telephone call

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blocker and is either on or off, with the user having the ability to enter an activation period for the blocker to be active or on. Though the Examiner cites the Horne period for allegedly showing an activation period for the device to be on or off, elements 302 and 304 merely define when the call screening feature of the Horne is to be on. The Horne system is always on and activated and merely switches between one of two states (1) allowing all incoming calls to ring through except those specifically designated to be blocked and (2) screening all incoming calls except those specifically designated to be permitted to ring through. See Abstract of the Horne patent. Thus, even if the references could be combined, they still fail to teach Applicant's claimed invention. These same arguments applies to providing dates for the activation period as claimed by applicant (Claims 27-29), as opposed to dates for the call screening feature of Horne.

Additionally, independent claim 15 and certain dependent claims claim include the details of the various switch configurations (series switch, first vertical switch, second vertical switch, answer switch). See claims 2, 5 and 12 of the Appendix. Novak and Horne fail to teach or disclose Applicant's claimed switches.

Furthermore, certain claims have also been amended to specifically indicate that a speaker and audible sound producing device, which are independent from the ringing bell of a user's telephone, are provided to alert the user that an incoming telephone call has entered the proper code. Novak merely uses the ringer of a user's telephone. The use of the separate speaker and audible sound producing device reduces the amount of AC signal required for the device and thus reduces costs.

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Applicant also wishes to bring to the Board's attention the Federal Circuit's decision in In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 2d. 1430 (Fed. Cir. 1990), which states that patentable weight must be afforded to functional limitations in the claims.

As shown above, a motivation, teaching or suggestion for the claimed invention is not found in either reference relied upon by the Examiner. Accordingly, Applicant respectfully traverses the Examiner's rejection of claims 1-2, 4-5, 8-9, 13-14, 17-18 and 25-29 under 35 U.S.C. §103(a) as being unpatentable over Novak in view of Horne. Thus, Applicant/Appellant respectfully asks the Board to reverse the Examiner's rejection of claims 1-2, 4-5, 8-9, 13-14, 17-18 and 25-29.

C. ISSUE NO. 3

Whether claims 10-12, 15-16 and 19-23 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Novak, Horne and Lee. Some of the deficiencies of Novak and Horne have been discussed above and also apply to the rejection of these claims. Lee fails to correct these deficiencies. Though Lee shows a speaker 223 there is absolutely no teaching in Novak for redesigning the circuitry of the Novak device and/or increasing the number of parts for the Novak device by including a separate speaker independent of the bell 3B in Novak.

Thus, the preceding paragraph provides separate patentable basis for claims 10-12, 15-16 and 19-23.

Applicant again wishes to bring to the Board's attention the Federal Circuit's decision in In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 2d. 1430 (Fed. Cir. 1990), which states that patentable weight must be afforded to functional limitations in

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the claims.

Accordingly, Applicant respectfully traverses the Examiner's rejection of claims 10-12, 15-16 and 19-23 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Novak, Horne and Lee. Thus, Applicant/Appellant respectfully asks the Board to reverse the Examiner's rejection of claims 10-12, 15-16 and 19-23 under 35 U.S.C. §103(a).

IX. APPENDIX

Claims 1, 2, 4, 5, 8-23 and 25-29, the subject of this appeal, are attached hereto in the Appendix.

X. CONCLUSION

Applicant/Appellant respectfully submits that Claims 1, 2, 4, 5, 8-23 and 25-29 are properly allowable over the references relied upon by the Examiner for the rejections.

WHEREFORE, Applicant respectfully submits that the appealed claims are allowable over the prior art of record and Applicant respectfully requests the Board to reverse the Examiner's final rejections, and pass this case to allowance.

Any additional charges, including Extensions of Time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,
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APPENDIX

Claim 1. An incoming telephone call blocking device associated with a telephone line operatively associated with a user's telephone, said blocking device comprising:

means for setting an activation period for blocking of incoming telephone calls, said activation period including a user entered starting time for blocking of incoming telephone calls;

means for requesting a caller during the activation period to enter a code for passing the incoming telephone calls;

means for determining if a correct code has been entered by the caller; and

means for allowing an incoming telephone call of the caller to pass through during the activation period where it is determined that the caller has entered a correct code.

Claim 2. The telephone call blocking device of claim 1 wherein when not in the activation period the user's telephone is connected with the telephone line through the closing of a series switch; wherein when blocking has been activated the user's telephone is disconnected from the telephone line by the opening of the series switch and closing of a first vertical switch and a second vertical switch.

Claim 4. The telephone call blocking device of claim 2 further comprising a means for detecting an incoming telephone call when blocking has been activated.

Claim 5. The telephone call blocking device of claim 4 wherein said means for detecting is a ring detector in communication with the first vertical switch and with a microprocessor; wherein upon detection of an incoming telephone call by said ring detector said microprocessor activates said means for requesting by closing an answer switch which also answers the incoming telephone call.

Claim 8. The telephone call blocking device of claim 1 wherein said means for requesting is a voice response unit and a

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tone receiver which inform the caller that blocking has been activated and requests the caller to enter a code to allow the caller's incoming telephone call to pass through.

Claim 9. The telephone call blocking device of claim 1 further comprising means for disconnecting the incoming telephone call if the correct code has not been entered within a predetermined time period.

Claim 10. The telephone call blocking device of claim 1 further comprising means for alerting a person that an approved incoming telephone call has been received during the activation period, said means for alerting independent from a ringing bell of a user's phone.

Claim 11. The telephone call blocking device of claim 10 wherein said means for alerting is a speaker and means for producing an audible sound through said speaker, said speaker and means for producing independent from the ringing bell of the user's phone.

Claim 12. The telephone call blocking device of claim 10 further comprising means for detecting when the user's telephone is picked up to answer a passed incoming telephone call during the activation period, said means for detecting causing said series switch to close and said first vertical switch and said second vertical switch to open, which connects the previously disconnected user's telephone to the telephone line.

Claim 13. The telephone call blocking device of claim 1 wherein said activation period further including a user entered ending time for blocking of incoming telephone calls.

Claim 14. The telephone call blocking device of claim 12 further comprising means for reactivating blocking of incoming telephone calls once the user's telephone is hung up if still within the user entered activation period.

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Claim 15. An incoming telephone call blocking device associated with a telephone line operatively associated with a user's telephone, said blocking device comprising:

means for setting an activation period having a user entered beginning time and a user entered ending time for blocking of incoming telephone calls;

wherein when not in the activation period the user's telephone is connected with the telephone line through the closing of a series switch; wherein when blocking has been activated the user's telephone is disconnected from the telephone line by the opening of the series switch and closing of a first vertical switch and a second vertical switch;

a ring detector for sensing an incoming telephone call when blocking has been activated, said ring detector in communication with the telephone line through the first vertical switch which is in a closed position when blocking is at least initially activated;

a microprocessor in communication with said ring detector;

means for requesting a caller to enter a code for passing the incoming telephone call, wherein upon detection of an incoming telephone call by said ring detector said microprocessor activates said means for requesting by closing an answer switch which also answers the incoming telephone call;

means for determining if a correct code has been entered by the caller;

means for allowing an incoming telephone call of the caller to pass through where it is determined that the caller has entered a correct code;

means for disconnecting the incoming telephone call if the correct code has not been entered within a predetermined time period;

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a speaker;

means for generating an audible sound through said speaker to inform a user that an incoming telephone call has been passed through, said means for generating independent from a ringing bell of a user's phone; and

means for detecting when the user's telephone is picked up to answer a passed incoming telephone call during the activation period, said means for detecting causing said series switch to close and said first vertical switch and said second vertical switch to open, which connects the previously disconnected user's telephone to the telephone line.

Claim 16. The telephone call blocking device of claim 15 wherein said means for requesting is a voice response unit and a tone receiver which inform the caller that blocking has been activated and request the caller to enter a code to allow the caller's incoming telephone call to pass through.

Claim 17. A method for automatically and selectively blocking incoming telephone calls during a user entered activation period, said method comprising the steps of:

(a) setting an activation period for blocking of incoming telephone calls including entering a starting time for the activation period by the user;

(b) requesting a caller to enter a code for passing the incoming telephone calls;

(c) determining if a correct code has been entered by the caller;

(d) allowing an incoming telephone call of the caller to pass through where it is determined that the caller has entered the correct code; and

(e) repeating steps (b) through (d) for all subsequent incoming telephone calls during the user entered activation

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period.

Claim 18. The method of claim 17 further comprising the step of disconnecting the incoming telephone call if the correct code has not been entered within a predetermined time period.

Claim 19. The method of claim 18 further comprising the step of alerting a person that an approved incoming telephone call has been received independent from a ringing bell of a user's telephone.

Claim 20. The method of claim 19 wherein the step of alerting comprises creating an audible sound through a speaker which is independent from the ringing bell of the user's telephone.

Claim 21. The method of claim 20 further comprising the step of means for deactivating said localized audible sound when the user's telephone is answered.

Claim 22. The method of claim 21 further comprising the step of reactivating blocking of incoming telephone calls once the user's telephone is hung up if still within the activation period.

Claim 23. The method of claim 17 further comprising the step of setting the correct time of day prior to step (a).

Claim 25. The method of claim 24 wherein step (a) further includes entering an ending time for the activation period by the user.

Claim 26. The method of claim 17 wherein step (c) also includes determining if the correct code is entered during the designated period assigned to the code.

Claim 27. The telephone call blocking device of claim 1 wherein said activation period including one or more user entered dates.

Claim 28. The telephone call blocking device of claim 15 wherein said activation period including one or more user entered dates.

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Claim 29. The method of claim 17 wherein setting an activation period of step (a) further including entering one or more dates by the user.

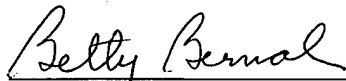
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In re application of: JEFFREY N. WEISS
Serial No. 09/848,753
Filed: 05/03/2001
For: SELECTIVE TELEPHONE BLOCKER WITH TIMER

I HEREBY CERTIFY that the following correspondence: APPELLANT'S BRIEF; CHECK IN THE AMOUNT OF \$165.00 FOR THE FILING FEE; and RETURN POSTCARD for confirmation of receipt is being deposited with the United States Postal Service, as First Class Mail, with sufficient postage, addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on this 2ND day of July, 2004.

I HEREBY DECLARE that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Any additional charges, including extensions of time, can be billed to Deposit Account No. 44538.


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